



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

[REDACTED]

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**PRELIMINARY RECITALS**

Pursuant to a petition filed November 13, 2014, under Wis. Admin. Code § HA 3.03, to review a decision by the Portage County Department of Human Services in regard to Child Care, a hearing was held on May 21, 2015, at Stevens Point, Wisconsin.

The issue for determination is whether petitioner failed to report a person in the home.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Petitioner's Representative:

Attorney Beth Ann Richlen  
300 Third Street, Suite 210  
PO Box 6100  
Wausau, WI 54402-6100

Respondent:

Department of Children and Families  
201 East Washington Avenue, Room G200  
Madison, Wisconsin 53703

By: [REDACTED]  
Portage County Department of Human Services  
817 Whiting Avenue  
[REDACTED]-5292

**ADMINISTRATIVE LAW JUDGE:**

Peter McCombs  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Portage County.
2. Petitioner received day care services for her children AB and KB during the period of alleged overpayment March 30, 2014 – November 13, 2014.

3. On April 8, 2014, petitioner and the father of her children, AB, appeared at a child support hearing and informed the court that they were residing separately.
4. The county determined that the couple was living together during the entire period of April, 1, 2014 – November 13, 2014. Petitioner was determined ineligible for child care because the father was not working during the period and he was living with the petitioner.
5. By notice identifying an effective date of April 23, 2014, the respondent informed petitioner that she was overpaid child care totaling \$1,578.00 from March 30, 2014, through May 3, 2014, claim no. 4900409754. Exhibit R-7.
6. By notice identifying an effective date of November 19, 2014, the respondent informed petitioner that she was overpaid child care totaling \$5,582.60 from May 4, 2014, through September 30, 2014, claim no. 0900419730. Exhibit R-14.
7. Petitioner and the father were not residing together during the period in question.

### **DISCUSSION**

Wis. Stat., §49.195(3), provides as follows:

A county, tribal governing body, Wisconsin works agency or the department shall determine whether an overpayment has been made under s. 49.19, 49.148, 49.155 or 49.157 and, if so, the amount of the overpayment.... Notwithstanding s. 49.96, the department shall promptly recover all overpayments made under s. 49.19, 49.148, 49.155 or 49.157 that have not already been received under s. 49.161 or 49.19(17) and shall promulgate rules establishing policies and procedures to administer this subsection.

Child care subsidies are authorized in Wis. Stat., §49.155, and thus they are within the parameters of §49.195(3). Recovery of child care overpayments also is mandated in the Wis. Adm. Code, §DWD 12.23. An overpayment is any payment received in an amount greater than the amount that the assistance group was eligible to receive, regardless of the reason for the overpayment. Wis. Adm. Code, §DWD 12.23.(1)(g).

A parent is eligible for child care services if she needs the care to attend W-2 approved school, to work, or to participate in W-2 activities. Wis. Stat., §49.155(1m)(a); W-2 Manual, §15.2.0. The agency shall recover child care payments if the authorized payments would have been less because the parent was absent from an approved activity while the child was in care. Child Day Care Manual, Chapter 1, §10.3.0. If both parents are in the household both must be working or attending W-2 activities. Wis. Adm. Code, §DWD 12.26(1).

The issue is whether the father lived with petitioner during the period she received child care. I conclude that the county has not shown sufficiently that they were living together. It is clear that they were living together before March 30, 2014; petitioner testified that AB moved out of her home after a “big fight” on February 18, 2014.

Clearly there are grounds for suspicions that petitioner is not telling the whole truth. The respondent presented a good deal of historical documentation verifying that petitioner had, on numerous occasions, reported AB residing in her home. The respondent argued that this was done, at times, to provide AB with eligibility for certain public benefits. The respondent also pointed to AB’s use of his FoodShare card, as well as his use of petitioner’s FoodShare card, as further evidence that petitioner and AB resided together during the overpayment period at issue here. The respondent also presented findings of an investigation by O’Brien and Associates that concluded that AB was residing in petitioner’s home during the overpayment period.

Aside from some of the hearsay issues involved with the respondent's exhibits, the bigger problem for the county is that there is a lack of evidence that petitioner is lying. The only evidence that clearly shows the two to be living together is during time periods before and after the overpayment period.

The petitioner testified very credibly regarding her "complicated" relationship with AB. She reported that she left AB following a September, 2013, fight, had her parents help her move, and lived with them thereafter until she was able to find a place of her own in November, 2013. She stated that she was physically abused by AB, yet when he showed up at her new residence in December, 2013, with a U-Haul, she consented to let him move in. On December 5, 2013, she stated that she informed the respondent that AB was in her home. That lasted until February 18, 2014, when, following another fight, AB moved out. She testified that petitioner never spent the night in her home during the overpayment period. AB's testimony, as well as testimony by petitioner's father, corroborated petitioner's testimony.

Finally, the usual motivation for concocting a domestic split is not present. Usually in situations like this the father has a job, and the "split" allows the couple to receive benefits they would not have received due to his income. In this case the father was not working, so I would have to believe that they concocted this split because he was too lazy to watch the child. Such a scenario is possible, of course, but far less likely than the first scenario. It is very possible, however, that the couple did split up, and petitioner applied for child care because the father was not present. I do not fault the respondent's actions here, nor its attempts to verify AB's actual residence. This case presents a mountain of contradictory information, which appears to stem from an extremely complicated and likely abusive relationship. Yet, without something more substantial countering the petitioner's credible testimony, I cannot conclude that petitioner was ineligible for child care during the overpayment period.

### **CONCLUSIONS OF LAW**

The county has not shown that petitioner and the father of her children were living together during a period when petitioner received child care assistance.

**NOW, THEREFORE, it is**

**ORDERED**

That the matter be remanded to the county with instructions to the county with instructions to rescind overpayment claim nos. 4900409754 and 0900419730 and to cease recovery of them. All actions required by this Order shall be completed within 10 days following issuance of this Decision.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.



## APPEAL TO COURT

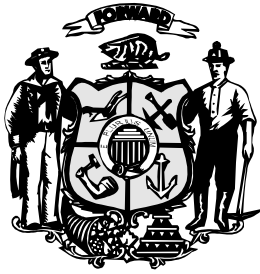
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Children and Families, 201 East Washington Avenue, Room G200, Madison, Wisconsin 53703, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 18th day of August, 2015

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\sPeter McCombs  
Administrative Law Judge  
Division of Hearings and Appeals



## State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on August 18, 2015.

Portage County Department of Human Services  
Public Assistance Collection Unit  
Child Care Fraud  
Attorney Beth Ann Richlen